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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JENNIFER ALLERT, Plaintiff and Respondent, v. ROGER S. HANSON, Defendant and Appellant.	G055084 (Super. Ct. No. 30-2015-00786947) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Walter P. Schwarm, Judge. Affirmed.

Roger S. Hanson, in pro. per., for Defendant and Appellant.

Horwitz and Armstrong, John R. Armstrong and Vanoli V. Chander for Plaintiff and Respondent.

* * *

Plaintiff Jennifer Allert, a real estate agent, sued her former client, defendant Roger Hanson, for failing to pay her commission of $100,000 pursuant to a Single Party Compensation Agreement (SPCA) regarding the sale of a residential property. In sum, Hanson argued he was not required to pay the commission because the sale was not fully executed in the stated time. At trial, it was disputed whether Hanson agreed to a handwritten change extending the contractual period. The trial court ultimately determined that while Allert did not prove that Hanson agreed to the handwritten change, the contractual expiration date was not material based on the conduct of the parties. Further, the court found that Allert proved that Hanson, by his conduct, expressly waived his right to rely on the original time period. The court entered judgment in Allert's favor for $100,000 plus prejudgment interest.

On appeal, Hanson offers various arguments as to why the trial court erred, which we shall discuss in due course. We find no error and affirm the judgment.

I

FACTS

In January 2014, Hanson retained the services of Berkshire Hathaway Home Services (Berkshire) to sell a residential property in Laguna Beach. Allert signed on behalf of Berkshire. The SPCA is a standard California Association of Realtors form. According to the trial testimony of Jeffrey Loge, who was affiliated with Berkshire and worked with Allert on the sale of Hanson's home, an SPCA "is an agreement that we use when a property most commonly is not listed with a broker, where there's not an exclusive right to sell the property. So in this case, where we bring a buyer to the seller and . . . the home is not listed on the open market, and so we complete an [SPCA] so that the seller understands by signing, that compensation would be owed upon the close of escrow of the property."

The SPCA stated that Hanson agreed to pay $100,000 in commission if he accepted an offer from specified buyers to purchase the property commencing on January 17, 2014, and ending on the interlineated date of February 7, 2014 (originally written as February 1), provided the buyers completed the transaction or were prevented from doing so by Hanson. Allert was, according to the express language of the SPCA, acting as an agent for both the buyer and seller.

The only other notable provision of this standard form was the signature dates. The dates were originally computer printed as January 17, 2014 for both Hanson and Allert, but were altered by hand to January 29 for Hanson, and initialed "R.H." Loge testified the change was because Hanson was originally going to come into the office on the 27th to sign, but did not do so until the 29th. Loge witnessed Hanson sign and put his initials next to the new date. Allert testified she signed the document herself on January 29.

According to the complaint and her testimony at trial, Allert had previously met with Hanson several times and has visited the property, which she described as "severely neglected." Nonetheless, she found the buyers later specified in the SPCA based on the property's location. The buyers originally offered $1.8 million for the property. After several counteroffers, they agreed to buy the property for $2.675 million on an "as is" basis, with a 90-day escrow.

With regard to the ending date of the SPCA, Allert testified she did not recall the details of it changing from February 1 to February 7. She did recall a conversation about needing additional time to give the buyers time to counteroffer. Loge testified that the handwritten change to the date was made when Hanson was in the office. He witnessed Hanson change the date from February 1 to February 7 by handwriting in the "7." Loge testified the reason for the change was scheduling issues regarding one of the buyers, necessitating more time for negotiations. Hanson admitted

he had an agreement with Allert before the SPCA expired, but testified he did not believe that Allert was his agent, nor did he execute or authorize a change to the expiration date.

Hanson never advised Allert that he believed the SPCA had expired. Hanson signed the third counteroffer, the one the buyers accepted, on February 4.

Allert continued to work on the sale after escrow was opened. She helped Hanson prepare relevant documents, reviewed all escrow related documents, and visited the home for appraisal and inspection purposes. Hanson did not question her presence or deny that she was working as an agent on the sale. Escrow eventually closed.

For some reason, Allert's commission was not retained by escrow, and when Allert contacted Hanson after the sale closed about her commission, he refused to pay. He claimed Allert was not entitled to the commission since the sale took place after he believed the SPCA expired.

In August 2015, Allert filed a first amended complaint alleging causes of action for breach of contract, reformation, and declaratory relief. According to the statement of decision, Hanson's answer asserted that he did not retain Allert's real estate services, did not engage her or Berkshire to find a buyer, Allert did not disclose that she represented both seller and buyer, and that the SPCA was defective because Allert either "personally, or in a conspiracy to defraud, altered said date of February 1, 2014 to February 7, 2014." Hanson denied he owed Allert any commission.

The case went to bench trial in December 2016, and the matter was taken under submission on December 21. On December 27, Hanson, having apparently fired the attorney who represented him at trial, filed a motion "ex parte to establish that the instant record establishes that . . . Allert, has been the alterer of the original offer made on January 29, 2014 to give [Allert] $100,000 if she could accomplish sale of the property . . . by the close of business on February 1, 2014." On January 12, 2017, Hanson filed a brief that purported to prove his assertions. Not surprisingly, considering

the case was already under submission, there is no indication of a response by Allert or the court in the record.

On January 31, the court issued a memorandum of intended statement of decision. The court found that with respect to the alteration of the SPCA, Allert was required to prove the alteration was authorized by clear and convincing evidence. Addressing whether the SPCA was *admissible* at all given the question of authenticity, the court found "there is sufficient evidence to support a finding of authenticity. [Loge] testified that he saw [Hanson] alter the SPCA to change the date from February 1, 2014 to February 7, 2014. While [Hanson] disputes this testimony, it is sufficient under Evidence Code section 403[1] to show authenticity and supports the admissibility of [the SPCA]. Therefore, the court overrules [Hanson's] authenticity objection and admits [the document]."

As pertinent here, on the issue of the expiration date and the handwritten change to the SPCA, the court found that Allert had not met the clear and convincing evidence burden to show that Hanson had altered or agreed to alter the document. The court went on to find, however, "that the alteration of the expiration date was not a material alteration." The evidence showed that Hanson created an agency agreement with Berkshire through Allert, and in doing so, incorporated by law the implied covenant not to do anything that injured the other party's right to benefit from the agreement. "The expiration period was not a material term because this implied covenant required [Hanson] to pay [Allert's] commission since he received the the benefits of her services." The evidence was sufficient to prove Allert had found a buyer for Hanson's property and used Allert's services. After Hanson learned of the alteration to the SPCA, "he still acknowledged the agency relationship" when he signed the escrow instructions, and he continued to use Allert's services. Thus, the alteration of the expiration period was not a

[1] All further undesignated statutory references are to the Evidence Code.

"material alteration" and "did not change the legal effect of the SPCA in light of the implied covenant."

The court also determined that Hanson waived the expiration period, as supported by Hanson's own testimony and numerous documents. "The evidence shows that [Hanson] accepted and retained the benefits and efforts of [Allert's] services to complete the sale and to facilitate the close of escrow. [Hanson] knew that [Allert] continued to negotiate on his behalf to consummate the sale, knew that [Allert] continued to provide services during escrow, and acknowledged the agency relationship on April 21, 2014." In sum, the court indicated its intent to award Allert $100,000 in damages for breach of contract, deny her request to reform the SPCA, and deny declaratory relief.

Hanson filed objections to the intended statement of decision, arguing that the court should reconsider the admissibility of the SPCA. Among other things, he accused Allert of "willful perjury" at trial. Hanson seemed to miss the import of the court's proposed finding about the ultimate irrelevance of the purported alteration of the date on the SPCA to its decision.

Apparently pursuant to an order that is not separately listed in the record, the parties submitted briefs on the doctrine of unclean hands.

On June 9, the court issued its final statement of decision. It is identical to the intended statement of decision, except that it added a new section regarding unclean hands and prejudgment interest. With respect to unclean hands, the court found the evidence "insufficient to show that [Allert] was the individual who altered the SPCA." Thus, the court found there was not sufficient evidence to bar Allert from recovery based on an unclean hands defense. With respect to prejudgment interest, the court awarded it to Allert. The court entered judgment for $100,000 plus $31,260.27 in prejudgment interest. Hanson filed the instant appeal.

II

DISCUSSION

Hanson's Briefs

Hanson is an attorney representing himself. Unfortunately, his briefs fail to conform to the California Rules of Court[2] in numerous respects.

While his "summary of errors" the trial court purportedly committed includes eight separate alleged errors, he has only five argument sections in his opening brief, ignoring the rule that separate headings are required for each point. We disregard any purported "error" not supported by argument and authority. (Rule 8.204(a)(1)(B); *Akins v. State of California* (1998) 61 Cal.App.4th 1, 17, fn. 9.) He also fails to include any discussion of the appropriate standard or standards of review applicable to the appeal.

The brief in no way complies with rule 8.204(a)(2)(C), which requires "'a summary of the significant facts limited to matters in the record.'" (See *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.) Indeed, Hanson does not provide any cogent summary of the underlying facts at all, but jumps immediately to the procedural history of the case. When he does discuss factual matters, sprinkled throughout his briefs, he certainly does not offer a fair summary of the evidence on both sides, which is required when challenging the sufficiency of the evidence – which, although we cannot be certain, Hanson appears to do so as to at least one of his arguments. (*Doe v. Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 218.)

Even more significantly, the briefs are so poorly organized and written that they are just difficult to follow and to determine what legal argument is being offered. While we have done our best to parse Hanson's points, such as they are, any "argument" we miss or do not address here due to poor briefing is deemed waived. (*Schubert v.*

[2] Subsequent references to rules are to the California Rules of Court.

Reynolds (2002) 95 Cal.App.4th 100, 108-109; *Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6.)

Motion to Strike Hanson's Reply Brief

Allert filed a motion to strike Hanson's reply brief for including irrelevant material, including references to documents in a motion to augment this court denied, and new legal arguments. Hanson opposes, not by addressing Allert's arguments, but by arguing Allert's own responsive brief was defective in numerous ways.

Allert's motion is granted to the extent it addresses matters outside the record, and to the extent it introduces new arguments not included in Hanson's opening brief. All such arguments are disregarded and deemed waived. (Rule 8.204(a)(1)(C); *Schubert v. Reynolds, supra,* 95 Cal.App.4th pp. 108-109; *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.) This includes, but is not limited to, the entirety of Arguments II and III in Hanson's reply brief.

Hanson's improperly offered motion to strike Allert's motion to strike is denied.

Appellant's Duty to Establish Error

We begin with the presumption that an order of the trial court is presumed correct and reversible error must be affirmatively shown by an adequate record. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) "The burden of affirmatively demonstrating error is on the appellant. This is a general principle of appellate practice as well as an ingredient of the constitutional doctrine of reversible error." (*Fundamental Investment ETC. Realty Fund v. Gradow* (1994) 28 Cal.App.4th 966, 971.) The order of the "'lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.'" *(Schnabel v. Superior Court* (1993) 5 Cal.4th 704, 718.)

Standards of Review

To the extent Hanson challenges the trial court's evidentiary rulings, such as the decision to admit the SPCA into evidence, we review for abuse of discretion. "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479.) Hanson must "demonstrate the court's 'discretion was so abused that it resulted in a manifest miscarriage of justice.'" (*Hernandez v. Paicius* (2003) 109 Cal.App.4th 452, 456, overruled on other grounds in *People v. Freeman* (2010) 47 Cal.4th 993, 1006, fn.4.)

As to the trial court's factual findings, we review for substantial evidence. "When findings of fact are challenged in a civil appeal, we are bound by the familiar principle that 'the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,' to support the findings below. [Citation.] We view the evidence most favorably to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor. [Citation.] Substantial evidence is evidence of ponderable legal significance, reasonable, credible and of solid value." (*Oregel v. American Isuzu Motors, Inc.* (2001) 90 Cal.App.4th 1094, 1100.) We do not "reweigh the credibility of witnesses or resolve conflicts in the evidence." (*Rufo v. Simpson* (2001) 86 Cal.App.4th 573, 622.) A party "raising a claim of insufficiency of the evidence assumes a 'daunting burden.'" (*Whiteley v. Philip Morris Inc*. (2004) 117 Cal.App.4th 635, 678.)

The Admissibility of the SPCA

Hanson first claims that he "proved"[3] that Allert altered the date on the SPCA, and the court erroneously "used the non-admitted" SPCA to rule that he breached the contract. He contends that he "was never a party" to the allegedly altered SPCA and therefore Allert could "never be a 'prevailing party' to a case where she was no longer in the case." As convoluted as this is, it all turns on whether the SPCA was properly admitted into evidence, an issue we review, as mentioned above, for abuse of discretion. (*Hernandez v. Paicius*, *supra*, 109 Cal.App.4th at p. 456.)

Under section 403, the proponent of a writing has the burden of producing evidence of its authenticity. The trial court, relying on Loge's testimony about witnessing Hanson alter the SPCA, ruled that although Hanson disputed Loge's account, this was sufficient evidence to admit it. We agree, and find no abuse of discretion.

Hanson relies on section 1402 to bolster his argument, but the trial court ultimately determined the alteration was not "material," a fact Hanson simply glosses over. Section 1402 only precludes the admissibility of altered documents when they are "material to the question in dispute." The materiality determination, too, is a proper exercise of the court's discretion (or, in the alternative, a factual determination supported by substantial evidence).

The trial court determined the alteration of the expiration date was not material because of the implied covenant not to injure the other party's rights under the agreement. Contracts do not exist to act as "gotchas!" and allow one party to enjoy its benefits while the other party does all or more of the expected work, yet can recover nothing. Thus, the covenant operates as a matter of law to ensure fairness. (See, e.g., *Torelli v. J.P. Enterprises, Inc.* (1997) 52 Cal.App.4th 1250, 1256-1257.)

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[3] Much of his "proof" is simply citations to pages of the trial transcript, without quotations or pointing to specific facts. He frequently does this throughout his briefs, and again, it does not meet his burden to cite specific facts from the record.

Here, the implied covenant required Hanson to pay Allert's commission because he received the benefit of her services, rendering the expiration date immaterial. The evidence demonstrated that Allert procured a buyer, conducted the negotiations, and took all necessary steps to close the sale. Hanson knowingly used Allert's services after the expiration date of the SPCA, indeed, he continued to do so after he learned of its alteration. He received the benefit of her services, and the trial court did not err in its determination that the expiration date, accordingly, was immaterial.

Hanson offers no legal authority or analysis as to how or why the court abused its discretion or lacked substantial evidence – he simply disagrees with the court's conclusion. Hanson has failed to meet his burden to establish error. (*Fundamental Investment ETC. Realty Fund v. Gradow*, *supra*, 28 Cal.App.4th at p. 971.)

The Import of Allert's Failure to Prove the Alteration was Authorized

According to Hanson, Allert's failure to prove, by clear and convincing evidence, that Hanson altered or authorized the alteration of the SPCA precludes the admissibility of the SPCA into evidence, and accordingly, Hanson should have prevailed at trial. Unfortunately, Hanson confuses the *admissibility* of the document as a threshold matter and the *use* of the document to prove Allert's case.

Hanson states that in the statement of decision, "the Court finds that [Allert] per . . . [section] 1402 'has not carried her burden of proof of showing that [Hanson] authorized the alteration by clear and convincing evidence, or by a preponderance of the evidence.'" (Underscoring omitted.) This quote misrepresents what the court stated, because it did not mention anything whatsoever about section 1402.

Further, because section 1402 only applies to "material" alterations, and the trial court subsequently concluded the alteration was not material, the court was under no obligation to strike the SPCA from evidence. Accordingly, Hanson's arguments that the

SPCA was not before the court, or that Allert was not before the court, or that this case was not before the court, are hereby rejected.

Waiver of the Expiration Period

Hanson next argues the trial court improperly found he had waived the expiration period.[4] As this is a factual determination, we review it for substantial evidence. (*Oregel v. American Isuzu Motors, Inc.*, *supra*, 90 Cal.App.4th at p. 1100.)

As we noted above, the trial court concluded that by clear and convincing evidence, Hanson waived any expiration of the SPCA by accepting and retaining the benefits of Allert's services to facilitate the sale and close escrow. The trial court cited to five documents showing Hanson created an agency relationship with Berkshire, despite his testimony that he did not hire Allert to sell his house. Although Hanson testified that he understood the SPCA expired on February 1, thereafter, he signed two counteroffers, numerous disclosures, three time extensions, escrow instructions, and numerous other documents. Hanson testified he offered to pay Allert $75,000 in early April, before he was aware of the alleged alteration. Further, there was evidence that Allert helped Hanson close escrow by completing required documents, going to the property for inspections, and completing other tasks.

Hanson claims Allert manipulated him to her advantage because she held the listing on the buyer's home, but she could not do so unless she "could obtain the purchase" of Hanson's home. In any event, under the standards regarding substantial evidence, this is neither here nor there. He cites no legal authority to contest the court's

[4] In this section of his brief, Hanson, for some reason, discusses Allert's right to file claims for attorney fees under Civil Code section 1717. If this is an attempt to contest an attorney fee order, it fails. Hanson does not cite to an attorney fee award in the record, or offer any legal argument other than simply a baldfaced assertion that Allert had no right to attorney fees.

determination that his actions waived the SPCA's expiration date. In sum, we find no error.

Unclean Hands

Hanson next argues the court should have ruled in his favor on the unclean hands defense. He offers no legal argument and no specific facts, again asserting that the SPCA was "stricken" from the lawsuit. The trial court found the evidence insufficient to establish unclean hands, and Hanson has failed to carry his burden to establish error. (*Fundamental Investment ETC. Realty Fund v. Gradow*, *supra*, 28 Cal.App.4th at p. 971.)

Confusion Over "Waiver"

In a separate argument related to the one regarding the court's finding of waiver of the expiration date, Hanson argues that before the trial court, he "asserted that 19 items personally selected by the Court to show that [he] had 'waived' the previous rulings of the Court were, in fact and in law, governing escrows in California real estate sales, items that could not be waived." (Underscoring omitted.) To call this confusing is an understatement, but Hanson appears to be arguing that the court determined that by signing certain documents necessary to complete the sale, he had "waived" his right to contest the SPCA's expiration date. This is incorrect, however, and not reflected by the record. The court did not base its ruling on signing escrow documents, but on the sum total of his actions after he claimed the SPCA had expired.

Indeed, Hanson's own comments in this section indicate that he continued to work with and through Allert and Berkshire to complete the necessary documents to make sure the sale closed. This is not a legal issue, but a misunderstanding of the trial court's findings, and we need not consider it further.

III

DISPOSITION

The judgment is affirmed. Allert is entitled to her costs on appeal.

MOORE, J.

WE CONCUR:

O'LEARY, P. J.

FYBEL, J.